Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-869

UNITED STATES OF AMERICA,

Petitioner

—*v.*—

UNITED CONTINENTAL TUNA CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI FILED JANUARY 15, 1975
CERTIORARI GRANTED MARCH 17, 1975

IN THE

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OCTOBER TERM, 1974

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UNITED STATES OF AMERICA,

Petitioner

—*v.*—

UNITED CONTINENTAL TUNA CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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UNITED STATES DISTRICT COURT

Civil Docket 70-81-ALS

Jury demand date:

UNITED CONTINENTAL TUNA CORPORATION, a corporation,
PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

Complt. for Damages Resulting from Ship Collision

For plaintiff:

Lillick, McHose, Wheat, Adams & Charles
Gordon K. Wright
Francis J. MacLaughlin
611 West Sixth St.
Los Angeles, Calif. 90017
623-1561

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 5 mailed	Clerk	1/14/70	Lillick, etc.	15—	1-16
J.S. 6 mailed	Marshal	10/13/71	40479	5—	12-16
Basis of Action:	Docket fee				
	Witness fees				
Action arose at:	Depositions				

DATE	PROCEEDINGS
1-13-70	Fld Complt for Damages resulting from Ship Collision. Issd summs—Md JS-5.
1-27-70	Fld summs—retd svd 1/20/70
3-24-70	Fld deft ANSWER.
9-18-70	Ord case set for P/T 12/7/70, 10AM.

DATE	PROCEEDINGS
12- 3-70	Fld stip & ord (ALS) contg P/T conf now set for 12/7/70, retable 3/8/71, 10AM.
	Ent in error see 71-87-CC
2-25-71	Fld stip & ord (ALS) contg P/T conf now set for 3/8/71, retable 5/10/71, 9:30AM.
5-10-71	Fld stip & ord (ALS) contg P/T conf retable 6/14/71, at 9:30AM.
5-25-71	Fld plft not of mot for substitution of plft's and for leave to file amended complt retable 6/21/71, at 10am, memoranda of pts & auths & affid of cnsl in support thereof.
6- 1-71	Fld U.S.A. not of mot for summy judgtm retable 6/21/71, at 10am, memo of pts & auths in support of deft's mot for summy judgmt; Fld U.S.A. memo in oppos to mot for substitution of plft's & for leave to file amended complt; LODGED proposed judgmt; LODGED proposed ord granting summy judgmt.
6-21-71	Fld stip & ord (ALS) for contg of hrg on mots & P/T conf retable for mots 8/2/71, & P/T 8/16/71, at 9:30A.M.
7-26-71	Fld plft memo of pts & auths in oppos to deft's mot for summy judgmt & affid of cnsl in support thereof.
8- 3-71	LODGED proposed amended complt for damages resulting from Ship Collision.
*8- 2-71	The Motion of plf for substitution and for leave to file amended complt and Motion of defendant for summary judgment are hereby continued to August 16, 1971 in order to permit plaintiff to lodge proposed amended complaint. Counsel may file additional memoranda, including points and authorities discussing the effect of the dissolution of the Phillipine corporation on this court's juris-

DATE	PROCEEDINGS
	diction. Counsel should treat the dissolution herein undertaken, the conflict of laws issues raised, and the effect of the attempted transfer of the claim from the corporation to the shareholders after dissolution. The motions will be considered August 16, and will be determined upon the pleadings and papers filed without oral argument. Local Rule 3(d). Rules of the Central District of California. If oral argument is deemed necessary, a hearing date will be hereafter set.
8-12-71	Ordered Case continued for hearing on Pretrial, Motion of plaintiff for substitution of plaintiff and for leave to file an amended complaint, and motion of USA for summary judgment to October 4, 1971, 9:30AM
10- 4-71	Ordered motion of plaintiff for substitution of pltf & for leave to file an amended complaint. Ord said mot denied. Ord mot of U.S.A. for summy judgmt is granted.
10-15-71	LODGED proposed ord denying plft's mot for substi of plft's & for leave to file amended complt & granting deft's mot for summy judgmt; LODGED propsed findgs of fact & conclus of law; LODGED proposed judgmt.
10-18-71	Fld order dnyg pltf's mot for sub of pltf's for leave to file amnd cmplt and granting deft's mot for summy judgmt: Fld finds of fact & concl of law: Fld jdgmnt & ord thereon dismissing pltf's cmplt w/prej & ea prty bear its own costs. (Ent 10/19/71 ntfd prtys) JS-6
12-15-71	Fld Plf's NOTICE OF APPEAL. Issd copies to (ALS) & R.E. & mld copy to Paul Gary Sterling, U.S. Dept. of Justice. Fld Plf's Designation of Record on Appeal. Fld Bond for Costs on Appeal in the sum of $250.00.

DATE	PROCEEDINGS
1- 7-72	Fld deft U.S.A. designation of record on appeal.
1-14-72	Issd & fwd to C/A Orig Rec on Appeal.
8-29-73	Place bond of National Surety Corp (no number) in file. mn
8- 8-74	Rec'd Frm C/A cc order Affirming in 72-1456 and Reversing Remanding in 70-81 (cy to CJ) cw
9- 9-74	Fld note of hrg on flg & spreading judgmt of C/A retnble 9/30/74, 9:30am. sa
9-11-74	Rec'd fr C/A orig rec on appeal. Mld recpt.
9-30-74	MIN ORD: Hrg hld, Ord jdgmt of C/A reversing & remanding jdgmt of USDC fld & spread. Ord case set for P/T 11-4-74, 9:30 AM. (Ent 10-8-74)
10-25-74	Fld deft's PT status memo.
10-29-74	Fld pltf's stmt for PTC.
11- 4-74	MIN ORD: Ord case cont'd for P/T retnble 11-25-74, 9:30 AM.
11-25-74	MIN ORD: Ord case cont'd for P/T retnble 1-6-75, 9:30 AM.
1- 6-75	Rec'd fr C/A cc of ord of C/A staying USDC prcdgs until fur ord of C/A (cy to Ct Clerk CJ)
1- 6-75	MIN ORD: Purs to ord of USCA all fur procs in case ord stayed until fur ord
3-18-75	md reopening JS 5 card

LILLICK, MCHOSE, WHEAT, ADAMS & CHARLES
GORDON K. WRIGHT
FRANCIS J. MACLAUGHLIN
611 West Sixth Street
Los Angeles, California 90017
623-1561
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE UNITED STATES
CENTRAL DISTRICT OF CALIFORNIA

No. 70-81-ALS

[Filed 1-14-70]

UNITED CONTINENTAL TUNA CORPORATION, a corporation, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT FOR DAMAGES RESULTING FROM SHIP COLLISION

Plaintiff, UNITED CONTINENTAL TUNA CORPORATION, for cause of action against the defendant, alleges as follows:

I

This is an admiralty and maritime claim within the meaning of Federal Rules of Civil Procedure, Rule 9(h).

II

Plaintiff is a Philippine corporation and at all times relevant hereto, was the owner and operator of a fishing vessel known as the M/V ORIENT.

III

Defendant, United States of America, at all times relevant hereto, owned and operated a naval destroyer known as the USS PARSONS.

IV

Plaintiff brings this action against defendant under the Suits In Admiralty Act, 46 USCA 741-752, and the Public Vessels Act, 46 USCA 781-790.

V

Citizens of the United States have the legal right, under Philippine law, to file an action in Philippine courts against Philippine citizens to recover for damages resulting from ship collisions. In view of the rights accorded United States citizens under Philippine law, plaintiff is entitled to reciprocal rights and is entitled to sue the defendant herein by virtue of the provisions of 46 USCA 785.

VI

On or about December 11, 1969, at approximately 0500 hours, the M/V ORIENT and the USS PARSONS came into collision on navigable waters near San Nicholas Island off the Coast of Southern California; said location being within the Central District of California or closest to that District. The USS PARSONS is within the District, or expected to be within the District, during the pendency of this action.

VII

The collision was caused by the sole fault of the USS PARSONS in that:

1) The USS PARSONS was manned with incompetent and unseaworthy personnel who negligently and incompetently directed the course and speed of the USS PARSONS.

2) The USS PARSONS failed to sound proper whistle signals.

3) The USS PARSONS failed to have on deck a competent lookout.

4) The USS PARSONS was negligently navigated in other manners now unknown to plaintiff; and leave to amend to state further particulars will be requested.

VIII

As a result of the collision the M/V ORIENT sank at the spot of the collision. The loss thereby sustained by plaintiff herein is approximately $1,000,000.

WHEREFORE, plaintiff prays:

1) That plaintiff have judgment against defendant in the sum of $1,000,000.

2) That plaintiff recover its costs herein.

3) That plaintiff receive whatever other relief may to the court seem just.

LILLICK, MCHOSE, WHEAT, ADAMS & CHARLES
GORDON K. WRIGHT
FRANCIS J. MACLAUGHIN

By FRANCIS J. MACLAUGHLIN
Francis J. MacLaughlin
Attorneys for Plaintiff

WM. MATTHEW BYRNE, JR.
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief of Civil Division

CLARKE A. KNICELY
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 688-2445

JOHN F. MEADOWS
Attorney in Charge, West Coast Office
Admiralty and Shipping Section

PAUL GARY STERLING, Attorney
Admiralty and Shipping Section
U.S. Department of Justice
16152 Federal Bldg., P.O. Box 36028
450 Golden Gate Avenue
San Francisco, California 94102
Telephone: (415) 556-3143
Attorneys for Defendant
United States of America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-81-ALS

[Filed Mar. 24, 1970, Clerk, U.S. District Court, Central District of California. By ———, Deputy.]

UNITED CONTINENTAL TUNA CORPORATION,
a corporation, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ANSWER

For Answer to Plaintiff's Complaint Defendant United States of America admits, and denies and alleges on information and belief as follows:

1. Paragraph I concerns matters of law for the attention of the Court and requires no Answer.

2. Defendant is without information sufficient to form a belief as to the truth of the allegations of Paragraph II.

3. Admits.

4. Paragraph IV concerns matters of law for the attention of the Court and requires no Answer.

5. Defendant denies that the United States has consented to be sued in this matter by virtue of the provisions of 46 U.S.C. 785, or any other statute. The remaining allegations of Paragraph V concern matters of law for determination by the Court and require no Answer.

6. Admits.

7. Denies the allegations of Paragraph VII and alleges that the collision referred to was caused solely by the negligence and unseaworthiness of the M/V ORIENT in particulars not presently known to Defendant. Leave is requested to amend this Answer to set forth the specific faults of the MV/ORIENT when they become known.

8. Defendant has insufficient knowledge to form a belief as to the truth of the allegations of Paragraph VIII and therefore denies the same.

First Affirmative Defense

Plaintiff has failed to allege that a citizen of the United States may maintain an action against the Philippine government in the Philippine courts for collision damages, as required by Section 5 of the Public Vessels Act, 46 U.S.C. 785. Accordingly, Plaintiff has failed to state a claim for which relief may be granted and this Court has no jurisdiction over Plaintiff's alleged cause of action.

Second Affirmative Defense

A citizen of the United States is not permitted under Philippine law to maintain an action against the Philippine government, in the Philippine courts, for collision damages under circumstances similar to those alleged in Plaintiff's Complaint. In accordance with Section 5 of the Public Vessels Act, 46 U.S.C. 785, therefore, the United States has not waived its sovereign immunity

and this Court has no jurisdiction over Plaintiff's alleged cause of action.

WHEREFORE, Defendant United States of America prays that the Complaint be dismissed with costs and that Defendant have such other and further relief as may be just in the premises.

WM. MATTHEW BYRNE
United States Attorney

FREDERICK M. BROSIO
Assistant United States Attorney
Chief of Civil Division

/s/ Clarke A. Knicely
CLARKE A. KNICELY
Assistant United States Attorney

JOHN F. MEADOWS
Attorney in Charge, West Coast Office
Admiralty and Shipping Section

/s/ Paul Gary Sterling
PAUL GARY STERLING, Attorney
Admiralty and Shipping Section
U.S. Department of Justice
Attorneys for Defendant
United States of America

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Answer was mailed this date by depositing in the United States mail, postage prepaid, addressed to:

Lillick, McHose, Wheat, Adams & Charles
Att: Gordon K. Wright and
Francis J. MacLaughlin, Esq.
611 West Sixth Street
Los Angeles, California 90017
Attorneys for Plaintiff

DATED: March 20, 1970

/s/ Paul Gary Sterling
PAUL GARY STERLING

LILLICK, MCHOSE, WHEAT, ADAMS & CHARLES
FRANCIS J. MACLAUGHLIN
611 West Sixth St., 28th Floor
Los Angeles, California 90017
623-1561
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE
UNITED STATES
CENTRAL DISTRICT OF CALIFORNIA

No. 70 81 ALS

UNITED CONTINENTAL TUNA CORPORATION,
a corporation, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF MOTION FOR SUBSTITUTION OF PLAINTIFFS AND FOR LEAVE TO FILE AMENDED COMPLAINT, MEMORANDA OF POINTS AND AUTHORITIES AND AFFIDAVIT OF COUNSEL IN SUPPORT THEREOF

TO DEFENDANT UNITED STATES OF AMERICA AND ITS COUNSEL:

Please Take Notice that at 10:00 A.M. on June 21, 1971 in the above entitled court John A. Kroh, Sr. and other shareholders of United Continental Tuna Corporation will move the court for an order substituting their names as parties plaintiff in place of United Continental Tuna Corporation, and for leave to file an amended complaint reflecting said substitution. The basis for said motion is that United Continental Tuna Corporation, a corporation, is dissolved and that its shareholders who

seek leave to be substituted herein are now and always have been the real parties in interest. Said motion will be based upon this notice, the memoranda of points and authorities and affidavit of counsel attached hereto and the pleadings in this action.

DATED: May 21, 1971

LILLICK, MCHOSE, WHEAT, ADAMS & CHARLES
FRANCIS J. MACLAUGHLIN

By Francis J. MacLaughlin
Attorneys for Plaintiff

AFFIDAVIT OF COUNSEL

I, Francis J. MacLaughlin do swear that the following matters are true to the best of my knowledge and belief.

This action was filed initially by United Continental Tuna Corporation, a Philippine corporation, which was at all times relevant hereto 99% owned by shareholders who are United States citizens and reside in the United States. Since the ship collision referred to in the complaint occurred on December 11, 1969, United Continental Tuna Corporation has been an inactive corporation and is now being dissolved in Manila in accordance with Philippine law. I am advised by Manila counsel that the proper documents to effect the dissolution have been filed with the appropriate Philippine authority and that one remaining minor formality concerning the corporation's balance sheet will be completed very shortly. I am advised and believe that the dissolution will be completed within several days and will be effective at the time this motion is noticed for hearing.

The American shareholders who seek leave to be substituted into this action are now and always have been the real parties in interest and the parties for whose

benefit this action was originally commenced. The names and citizenship of the shareholders are as follows:

John A. Kroh, Sr., a citizen of Missouri

Edward L. Winn, Sr., a citizen of Missouri

Allen T. Perry, a citizen of Missouri

Robert E. Gunn, a citizen of Missouri

Cornelius Roach, a citizen of Missouri

Herman Sutherland, a citizen of Missouri

H. O. Peet & Co., Inc., a corporation, organized and existing under the laws of Missouri

Stephens, Inc., a corporation, organized and existing under the laws of Arkansas

The above-named shareholders owned 99.5% of the stock of United Continental Tuna Corporation prior to its dissolution. The remaining ½ of 1% was owned by several former employees of United Continental Tuna Corporation who do not wish to be joined in this litigation and have granted to the other shareholders whatever interest they may have in the proceeds of this litigation.

FRANCIS J. MACLAUGHIN
Francis J. MacLaughlin

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

Subscribed and sworn to before be this 21st day of May 1971

/s/ Joanne M. FitzGerald

[SEAL]

Official Seal
Joanne M. FitzGerald
Notary Public—California
Principal Office in
Los Angeles County
My Commission Expires Dec. 10, 1973

ROBERT L. MEYER
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief of Civil Division

CLARKE A. KNICELY
Assistant United States Attorney
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 688-2445

JOHN F. MEADOWS
Attorney in Charge, West Coast Office
Admiralty and Shipping Section

PAUL GARY STERLING, Attorney
Admiralty and Shipping Section
U.S. Department of Justice
16152 Federal Bldg., P.O. Box 36028
450 Golden Gate Avenue
San Francisco, California 94102
Telephone: (415) 556-3143
Attorneys for Defendant
United States of America

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-81-ALS

[Filed Jun. 1, 1971, Clerk, U.S. District Court, Central District of California. By ———— Deputy]

UNITED CONTINENTAL TUNA CORPORATION, a corporation, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF MOTION FOR SUMMARY JUDGMENT

TO LILLICK, McHOSE, WHEAT, ADAMS & CHARLES, ATTENTION FRANCIS J. MacLAUGHLIN, ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that at 10:00 a.m. on June 21, 1971, in the above-entitled court, or as soon thereafter as counsel can be heard, Defendant United States of America will move for an order dismissing Plaintiff's Complaint upon the ground that Philippine law does not in fact meet the reciprocity requirements of the Public Vessels Act, 46 U.S.C. 785. This Motion is based upon the pleadings in this action and the accompanying Memorandum of Points and Authorities.

DATED: May 28, 1971.

ROBERT L. MEYER
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief of Civil Division

/s/ Clarke A. Knicely
CLARKE A. KNICELY
Assistant United States Attorney

JOHN F. MEADOWS
Attorney in Charge, West Coast Office
Admiralty and Shipping Section

/s/ Paul Gary Sterling
PAUL GARY STERLING, Attorney
Admiralty and Shipping Section
U.S. Department of Justice
Attorneys for Defendant
United States of America

ROBERT L. MEYER
United States Attorney

FREDERICK M. BROSIO, JR.
Assistant U.S. Attorney
Chief of Civil Division

CLARKE A. KNICELY
Assistant U.S. Attorney
1100 U.S. Courthouse
312 North Spring Street
Los Angeles, California 90012

JOHN F. MEADOWS, Attorney in Charge
Admiralty & Shipping Section, West Coast Office

PAUL GARY STERLING, Attorney
Admiralty & Shipping Section
Department of Justice
Post Office Box 36028
San Francisco, California 94102
Attorneys for Defendant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Civil No. 70-81-ALS

[Filed Oct. 18, 1971, Clerk, U.S. District Court, Central District of California. By ———Deputy]

UNITED CONTINENTAL TUNA CORPORATION, a corporation, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

ORDER DENYING PLAINTIFF'S MOTION FOR SUBSTITUTION OF PLAINTIFFS AND FOR LEAVE TO FILE AMENDED COMPLAINT

AND

GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff's Motion for Substitution of Plaintiffs and for Leave to File Amended Complaint and Defendant's Motion for Summary Judgment having come on to be heard on August 16 and October 4, 1971, and the Court having considered the memoranda of points and authorities on file herein and having heard argument of counsel, and the Court having found that there are no genuine issues of fact in controversy,

IT IS HEREBY ORDERED that Plaintiff's Motion for Substitution of Plaintiffs and for Leave to File Amended Complaint be and the same hereby is denied and that Defendant's Motion for Summary Judgment be and the same hereby is granted.

DATED: Oct. 18, 1971

/s/ Albert L. Stephens, Jr.
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 74-869

UNITED STATES, PETITIONER

v.

UNITED CONTINENTAL TUNA CORPORATION

ORDER ALLOWING CERTIORARI

Filed March 17, 1975

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

Mr. Justice Douglas took no part in the consideration or decision of this petition.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1975 573836 153